IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

TUESDAY, THE THIRD DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE GODA RAGHURAM

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WRIT PETITION NO : 16536 of 1996

Between:

A.Krishna Murthy, S/o Prabhakar Rao, age:28 yrs, Teacher,
I.T.D.A.School,Chinamerangi, Vizianagaram dist.

... PETITIONER

AND

1. The Project Officer, Integrated Tribal Development

Agency (ITDA), Parvatipuram, Vizianagaram Dist.

2. The Commissioner for Tribal Welfare,

Telugu Sankshema Bhavan, Masab Tank, Hyderabad.
3) Govt. of AP, rep by its Secretary, Tribal Welfare Dept.,

Secretariat Bldgs, Hyderabd.

...RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to pass orders particularly one in the nature of writ of mandamus, declaring the action of the respondents in dispensing with the services of the petitioners as arbitrary, illegal, and violative of Arts.14 & 16 of the Constitution of India, and Consequently direct the respondents to continue the services of the petitioner as per Govt.Memo.20981/A3/942, Finance and Planning Dept., dated 2-12-1994.

Counsel for the Petitioner: MR.D.LINGA RAO

Counsel for the Respondents: GP FOR SOCIAL WELFARE

The Court made the following :

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ORAL ORDER:

Without any process of recruitment and without any public notification, the petitioner was appointed as a teacher-cum-tutor by the Project Officer, ITDA, Parvathipuram, to work in the Tribal Welfare Schools, on 1.10.1993, on a monthly honorarium of Rs.1,200/- initially for a period of two months, which was extended thereafter by administering breaks during the vacation period. The petitioner worked as such till the end of the academic session in 1996, where after, he was not re-engaged. Aggrieved by his discontinuance and seeking regularization of service, this writ petition is filed.

Petitioner relies on the orders of the State Government in G.O.Ms.No.212, Finance & Planning, dated 22.04.1994 and another memo issued by the Social Welfare Department, dated 2.12.1994. The Social Welfare Department Memo dated 2.12.1994 is *in pari materia* with the orders of the State Government in G.O.Ms.No.212. *Inter alia*, the benefit of regularization of service is available only when clear vacancies exist and persons, who are temporarily appointed and are continuing as such have put in five years of service as on 25.11.1993. Demonstrably and admittedly, the petitioner entered into service on 1.10.1993 and has been discontinued since the academic year 1996. In terms of the Government order in G.O.Ms.No.212, the petitioner is not entitled to the benefits of regularization.

The post of a teacher in Tribal Welfare Schools is a post whose salary is paid from the public exchequer. These schools are administered by the State or their instrumentalities. Appointment to such public post is an asset of the entire civic community and the appointment process cannot be clandestine or irrational. While it is open to the State to prescribe qualifications rationally tailored to the needs of a post, the citizens desirous of such public employment are required to possess such qualifications as are rationally prescribed. Once qualifications are prescribed to a public post, the legitimacy of the recruitment process requires that all citizens

possessing the prescribed qualifications should be enabled to compete for selection to the public post. Transient aberration like temporary appointment continued for some time, may justify an occasional departure from this fundamental premise of constitutional Government. Orders of regularization could perhaps be issued in such circumstances, without inviting the vice of unconstitutionality. But, to continue such measures to meet the exigencies, as a regnant measure of unconstitutional recruitment would be to sanctify unconstitutional conduct. It is trite that no Mandamus can be issued to perpetuate or enable unconstitutional conduct. The contention of the petitioner that the provisions of G.O.Ms.No.212 should be considered as a permanent feature for regularization of service and that the cut off date mentioned therein should be ignored or treated as directory, does not, on the above analysis of law, commend acceptance by this Court.

For the above reasons, there are no merits in the writ petition, and is accordingly dismissed. No costs.

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3rd August, 2004.

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To

1. The Project Officer, Integrated Tribal Development Agency (ITDA), Parvatipuram, Vizianagaram Dist.
2. The Commissioner for Tribal Welfare, Telugu Sankshema Bhavan, Masab Tank, Hyderabad.

3) The Secretary, Tribal Welfare Dept.,

Govt.of Andhra Pradesh, Secretariat Bldgs, Hyderabd.

4) Two copies to the Govt.Pleader for Social Welfare,

High Court buildings, Hyderabad. (OUT)

5) Two CD copies.